1963

State of Utah et al v. Barbara Bell : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, IN THE INTEREST OF MARALEE LONDON.
ROBERT GEARY LONDON and SANDRA CLEGG LONDON,
Petitioners and Appellants.

vs.

BARBARA BELL, Guardian ad Litem for JEANNE BELL,
Objector and Respondent.

Case No. 10,002

APPELLANTS' BRIEF

E. F. ZEIGLER, *Judge*

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APPELLANTS' BRIEF

An appeal from an order of the Juvenile Court of the First District in and for Weber County, Utah.

E. F. ZEIGLER, *Judge*

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STATEMENT OF THE KIND OF CASE

This is an appeal by the petitioners-appellants, Robert Geary London and Sandra Clegg London, from a decree

and order of the Juvenile Court of the First District in and for Weber County, State of Utah, holding that Maralee London, a minor child now in the care, custody and control of the petitioners and appellants, is not an abandoned and deserted child, and ordering the return of said minor child to the care, custody and control of her natural mother, Jeanne Bell.

DISPOSITION OF LOWER COURT

The case was tried to the judge, and from the finding that said minor child was not an abandoned and deserted child and a decree providing for the return of said minor child to her natural mother, Jeanne Bell, the petitioners-appellants bring this appeal.

RELIEF SOUGHT ON APPEAL

Petitioners and appellants seek reversal of the decree of the Juvenile Court and the order returning Maralee London to her natural mother, Jeanne Bell, on the ground that said minor was and is now an abandoned and deserted child, and that it is in the best interest and welfare of said minor child that the natural mother be permanently deprived of her custody.

STATEMENT OF FACTS

The child in question and designated herein as Maralee London was born on the 12th day of February, 1962, in the State of California, as the natural child of Jeanne

Bell, who at the time of delivery was fourteen years old (T. 28). Throughout the pregnancy, the natural mother, Jeanne Bell, and her mother, Barbara Bell, discussed with their family doctor the possibility and desirabiliy of placing the child for adoption (T. 22-23). The natural mother claims to know who the natural father is, but no marriage was planned, and the natural mother and her guardian made no plans to provide a home for the baby (T. 17, 20, 10, 39). Petitioners-appellants were interested in adopting a child and were advised by relatives to contact Genevive Meierstein and Dr. Morris, who worked with her in the placing of children for adoption (T. 76, 77). Petitioners-appellants were then advised on the 12th day of February, 1962, that the baby they had been waiting for had been born and that they should go to California, and on the 13th day of February, 1962, they went to the hospital to see the baby (T. 69). At the specific request of the natural mother, Jeanne Bell, and her guardian, Barbara Bell, petitioners were introduced to Jeanne Bell in her hospital room on the 14th day of February, 1962 (T. 5). At that time petitioners presented to Jeanne Bell a document purporting to be a preliminary consent for adoption (Exh. 1), which reads as follows:

TO WHOM IT MAY CONCERN:

My name is Jeanne Bell, and I reside at Sunland, County of Los Angeles, State of California. I gave birth to a child on February 12, 1962, in Burbank Community Hospital in the City of Burbank, State of California, for the deilvery of this child. The father of this child is unknown.

I have been informed that a Mr. Robert Geary Lon-

don and Sandra London, his wife, residing at Roy, Utah, desire to adopt the child. They have come to Los Angeles immediately after being notified of its birth for the purpose of taking the child back to Roy, Utah. I believe that Mr. and Mrs. London would be good parents and would give my child proper care, support, and education. They have one child in their family, and I believe that this child would add much joy and happiness to their lives and that this arrangement is desirable for all parties concerned.

It is my expectation to deliver the child into their custody as soon as practical after its birth, with the understanding that they will take the child to their home in Roy, Utah, and will institute adoption proceedings there shortly after they arrive home. I understand, however, that under the Utah law, the petition for adoption cannot be granted until after the child has lived with the adopting parents for at least one year.

I also understand that the adoption cannot be completed without my written consent, and that no other consent than mine is necessary as I am unmarried. It is my present intention to sign such consent when presented to me by the appropriate authority.

I do not expect and will not accept any payment or other consideration for agreeing to this adoption or for giving such consent. I am informed, however, that Mr. and Mrs. London intend to pay for my doctor and hospital bills in connection with the birth of the child upon the basis that if they had a natural child of their own at the time, they would be put to that expense.

The entire adoption procedure and the legal rights and liabilities which arsie from it are thoroughly

understood by me, and in particular the fact that after the adoption I shall have no rights of any kind to custody or visitation and that the child from the time of the adoption shall be legally in the relationship of a total stranger to me, and I shall have no more right in respect to it than it would to a strange or unrelated child. I have also been informed and understand that this statement is purely a statement of my present intention and that I have the legal right to refuse to sign my consent to the adoption when it is presented to me. I do now fully intend, however, to cooperate in every way in completing the proposed adoption above outlined. Dated this 14th day of February, 1962, at Burbank, California.

(s) Jeanne Bell
(s) Mrs. Barbara Bell

(Notary clause)

The natural mother, Jeanne Bell, and her guardian, Barbara Bell, signed the document only after having read it and only after a paragraph or clause was explained to them by Genevive Meierstein (T. 10, Meierstein Dep. 11). The guardian, Barbara Bell, who is also objector-respondent, not only concurred in, but encouraged the foregoing proceeding (T. 10, 37-39). For approximately ten months petitioners-appeallants proceeded to become parents, guardians, and family to this infant (T. 92), and without knowledge of any problems in California, filed their petition for adoption and obtained an order appointing a commissioner to take the consent of the natural mother (T. 94, 100; Exh. 8). On that same afternoon of November 21, 1962, the natural mother, Jeanne Bell, mailed an envelope addressed to counsel for petitioners-appellants containing exhibits 2 and 3, requesting that the minor child be re-

turned to her (T. 32, Exh. 8). The petition for adoption had already been filed, and appellants refused to deliver the baby to the objector-respondent. On the 28th day of January, 1963, an order dismising the petition for adoption without prejudice was signed and entered, the objector-respondent having retained counsel in Ogden, Utah. On or about the 22nd day of March, 1963, a petition was filed in the Juvenile Court of the First District in and for Weber County, alleging that Maralee London was an abandoned and deserted child and that the natural mother, Jeanne Bell, was not a fit and proper person for the care, custody and control of said minor child. From an adverse ruling of the Juvenile Court this appeal is brought. However, the decree also provided that the temporary custody and control of the said Maralee London should remain with petitioners-appellants should the decision of the Juvenile Court be appealed to the Supreme Court of the State of Utah, and said minor child is presently residing with petitioners.

ARGUMENT

POINT I

MARALEE LONDON WAS AN ABANDONED AND DESERTED CHILD, AND THE JUVENILE COURT ERRED IN FAILING TO SO HOLD.

The Juvenile Court has broad and comprehensive latitude and discretion in determining custody of a child, and it may order that the natural parent be permanently deprived of custody and that the child be placed in a family for adoption without consent of the parent. *Devereaux v.*

Brown, 2 U.2d 334, 273 P.2d 185. Where parents are permanently deprived of child custody, their parental rights are terminated, and consent to proposed adoption is unnecessary. *Jacob v. State Public Welfare Commission,* 7 U.2d 304, 323 P.2d 720, U.C.A. 55-10-32.

The Utah Code Annotated, 1953, Section 78-30-4, 5, provides for adoption without the consent of the natural parents based upon a finding that said child was deserted by its natural parents. Also, under the provisions of 55-10-30, U.C.A., the Juvenile Court has the power and the duty to determine whether or not a child has been neglected or deserted; and further, under sub-section (4) the court has the power to place the child in the custody of a guardian other than the child's natural parents. A neglected child is defined at 55-10-6, U.C.A., as follows:

> A child who is abandoned by his parent, guardian, or custodian. A child who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian. A child whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care or other care necessary for his health, morals or well-being.

From the very beginning of her pregnancy, Jeanne Bell and her mother discussed with Dr. Ralph Sloane the fact that this child was to be placed for adoption (Sloan Dep. 25, 33). They knew that arrangements for adoption were being made early in the pregnancy by Dr. Clifford J. Morris (T. 46). They had ample time to seek legal counsel and to determine what procedure would be in the best in-

terest of the minor child. When the preliminary consent for adoption was presented in that hospital room, Jeanne Bell and her mother read the document, asked questions about it, and then signed it before Marian P. Kringle, a Notary Public. Their intent at the time they signed that document is beyond dispute, and the testimony of Barbara Bell at the hearing shows a complete change of attitude on her part as follows:

> Q. You state in your letter, Exhibit No. 3, that you are willing to support your daughter in her attempt to regain custody of this child, but at the time this child was born and during the pregnancy, apparently you were not willing to support her and her desires at that time, is this correct?
>
> A. Well, it was, but that wasn't really the reason. I think I was trying to get my little girl back like she was before and forget about it, because she was just thirteen when it happened, and fourteen when she had her baby, and a girl can grow up an awful lot at thirteen, fourteen and fifteen. She will be fifteen in June. All this happened in a three-year period, and the baby is still only thirteen months old now. She has developed from a thirteen-year-old girl to a young woman. I feel she can care for it now where before I didn't.

And again, at page 45:

> Q. Now did you have this same belief at the time you signed Exhibit No. 17.
>
> A. I am sure I didn't think about it. In fact, I hadn't thought about it until actually at the time I didn't think about it. The situation was pretty bad. I believe I felt at the time that because of her

youth, of her age at the time the baby was born, that was the big factor. If she had been older she would have had a life of her own. At that time she would have been old enough to know what she wanted and asserted her own rights, and otherwise I would have had an altogether different attitude if she had been older.

The natural mother, Jeanne Bell, gives a little different view of her attitude at Page 4 of the Transcript:

Q. At the time that these discussions were had, did you advise anyone of your intent to place the baby out for adoption?

A. You mean, did I tell anyone I would have the baby adopted?

Q. Yes.

A. The doctor thought I should place the baby with the Londons.

Q. Now was this before the birth of the baby?

A. Yes.

Q. Did you advise anyone besides your doctor?

A. We didn't talk about it at home. We were planning to leave it up to the doctor.

Q. Were any provisions made for keeping the baby at the time of its birth?

A. No.

Q. None whatsoever?

A. My mother had made none, but I was planning on keeping it and fighting to ge my baby back when I could, and as far as I knew I had no legal way then of keeping it, so I planned someday I would try and get it back if I could.

And again, at page 7:

Q. So what you are saying, Miss Bell, in effect, is at the time this happened, the Londons happened to be a convenient vehicle for someone to take your baby until such time (as) you wanted it back, is this correct?

A. No, that isn't. I wanted my baby, but what I really planned to do was think it over, but like I say, I was young and I really didn't realize actually what I was doing. It was right at that time everyone was trying to make my decisions for me and running my life for me, and that I didn't have a mind of my own, and I guess I wasn't in a position to go on my own.

Q. You feel now at fourteen months later that this position has completely changed. Is this correct?

A. Yes, I do. I feel like I can make arrangements for its care, and I have more faith. I know what some of my legal rights are now.

The Londons received the baby from the hospital staff on the 15th day of February, 1962, and from that date until the 26th day of November, 1962, there was not even an inquiry made to the Londons or to their counsel by the natural mother, and even after Exhibits 2 and 3 were

mailed, no legal steps were taken by the natural mother to obtain the custody of her child. Petitioners-appellants were the ones who filed a petition in the Juvenile Court to bring the matter to a conclusion.

Abandonment of a child as ground for adoption without parental consent imports any conduct of a natural parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child. *Shumway v. Farley,* 68 Ariz. 159, 203 P.2d 507. As was stated at *In re Potter,* 149 P. page 23 at page 24:

> Abandonment does not necessarily mean that a parent has no interest in the child's welfare, it means rather a withdrawal or neglect of parental duties. It means a withholding of care and protection, of sympathy and affection.

In the case of *Harrison v. Harker,* 142, P. 716, the court in a split decision returned the child to its natural parents, but two comments illustrate the case at bar perfectly. At page 736 it is said:

> Since you have abandoned the child or otherwise voluntarily divested yourself of its custody and permitted others to provide it with a home, maintain, clothe, feed and care for it as their own, the child's interest and not your desires or your mere naked legal rights shall control and direct the discretion of the court in the premises.

And again, at page 741, the court stated:

> Suppose the mother should again meet with misfortune such as in her judgment would justify her

> to abandon the child, would she not again abandon it precisely as she did to further her own welfare.

In the present case the natural mother, Jeanne Bell, did have a change of heart after the first hearing, as expressed in her letter of April 22, 1963, marked Exhibit 9, as follows:

> Dear Mr. Murray: I am writing in regards to a custody case you are representing me in.
>
> Because of personal problems, I am very sorry to tell you I have decided to discontinue trying to get my child back. When I am eighteen I plan to repay my mother the money she has spent for this. I can't tell you how sorry I am. I don't want to do this, but I have no other choice.
>
> If you have any fee unpaid, you will be paid. I'm so sorry I wasted your time, but it is impossible for me to continue.
>
> Please write me if you have any question. I'm very, very sorry.
>
> Sincerely,
>
> (s) Jeanne Bell

The foregoing letter was never mailed to Mr. Murray, but instead was handed to Robert Geary London at Los Angeles, California.

In *Kurtz, v. Christensen,* 209 P. 340, 1922, a Utah case, the court found that the natural mother voluntarily permitted her doctor to place the child for adoption. Thereafter, the natural mother married the child's father, and in a habeas corpus proceeding the court found that the na-

tural mother had abandoned her child, and the decision was affirmed on appeal. The court in upholding the decision of *Hummel v. Parrish,* 43 U. 373, 134 P. 898, quoted at page 344:

> Though the presumption is that it is for the best interest of the child and society that it remain with its natural parents during minority (nevertheless) where a parent has surrendered her child to others in infancy and it has been allowed to remain with others until new ties of mutual affection are formed, the child's welfare will control the parents' rights in habeas corpus proceedings for its return.

Jensen v. Early, reported at 228 P. 217, is a Utah case decided in 1924 with facts very similar to the case now before the court. In that case the natural mother was three years older than the natural mother in this present case. In the Jensen case demand was made for the child six months after its birth, and in the case at bar, ten months after birth. In the Jensen case the natural mother reached her majority under the law within six months after the child was born; in the present case, the natural mother, Jeanne Bell, is now sixteen years of age and has not seen her child since the 14th day of February, 1962. In the Jensen case the district court found that there had been an abandonment, but the decision was reversed by the Supreme Court holding that there had been no abandonment. Abandonment was there defined as follows:

> Abandonment in such cases, ordinarily means that the parent has placed the child on some doorstep or left it in some convenient place in the hope that someone will find it and take charge of it, or has abandoned it entirely to chance or to fate. To make

> arrangements beforehand with some proper and competent person to have the care and the custody of the child it not an abandonment of it as that term is ordinarily understood.

In the recent case of *Wilson v. Pierce,* 14 U.2d 317, 383 P. 2d 925, the natural mother was a married woman whose expected child was fathered by someone other than her husband. She was anxious for the expected child to be well taken care of in an adequate home, and after failing to place the child with a family in Texas, succeeded in placing her expected child with an Ogden, Utah, couple under an agreement much less comprehensive than Exhibit 1 in the present case. In the following twenty-four months Mrs. Pierce kept in contact with the Wilsons, and on one occasion even visited her natural daughter. However, the Wilsons took no steps toward adoption until the natural mother requested the return of her child two years later. The same types of defenses were interposed there as in the case presently before the court. In affirming an order of the district court granting the adoption based on abandonment, the court said, at page 927:

> The significant fact here is that the adoption is not grounded upon the written consent as such. Section 78-30-5, U.C.A. 1953, provides that a deserted child may be adopted without the consent of its parents. This is a practical necessity which the law wisely recognizes for the relief of children who might be abandoned to a worse fate than being so rescued. In the interest of encouraging rescue and care of children left without parental refuge, it is not the policy of the law to impose undue hazards upon people disposed to come to their aid by leaving

> them at the mercy of the whim or caprice of a natural parent who has abandoned his child.

In referring to the definition of abandonment given in the Jensen case, the court further stated, at page 928:

> We see no reason for disagreement with the language as applied to the particular fact situations. But it was not meant to prevent a finding of the true facts where there has been an actual desertion or abandonment. A distinction should be made between leaving a child under circumstances which show a continuing intention to fulfill the duties of parenthood by seeing to it that the child is cared for and of possibly resuming such responsibility if that becomes necessary; as distinguished from an intent to completely and permanently abandon a child and parental responsibilities to it where there is in fact the latter type of abandonment, it matters not whether it is to a situation where others may be expected to care for the child, or it is left to the mere chance of whatever fate might befall it. Whether there has been such an abandonment and what is to be done with the child depends upon the facts and circumstances of each case.

Maralee London is now two years old. She has never lived with her natural mother, and the only parents she knows are the petitioners-appellants. The court, in quoting from the Kurtz case, once again affirmed the principle that the best interest of the child is always the principal concern. Here, as in that case, Maralee London knows no other parents, and the present wholesome relationship existing between petitioners-appellants and said minor child should not be ignored.

In its Memorandum Decision, the Juvenile Court pointed out two determining factors basic to the legal concept of abandonment (Record, p. 16). The court first came to grips with the significance of Exhibit No. 1, but dismissed its evidentiary value based on Jeanne Bell's youth.

Section 224 of the California Civil Code provides that the consent of the natural mother of an illegitimate child is the only consent necessary for the adoption of said child. Section 226 further provides:

> A parent who is a minor shall have the right to sign a consent for the adoption of his or her child, and such consent shall not be subject to revocation by reason of such minority.

It would then appear *a fortiori* that a minor who abandons her child is not less gulity of abandonment by reason of her youth and minority. The doctrine of abandonment is not balm for the wounds of an erring mother, but rather for the protection of an infant child whose individual rights and survival depend upon society offering protection where those individually responsible have failed to do so. Petitioners-appellants therefore contend that the Juvenile Court minconstrued the evidentiary value of Exhibit 1 and gave great weight to the youth of the natural mother at the time of the signing.

The second factor influencing the decision of the Juvenile Court was the elapsed time of ten months between the signing of Exhibit 1 and the demand for the return of the child to the natural mother. The court then stated

(Record, p. 16): "This lapse of time, without more, would not be decisive," and the case of *Taylor v. Waddoups*, 241 P.2d 157 (1952) is quoted as supporting that proposition. However, in the next paragraph of the Memorandum Decision and on the same page, the Juvenile Court stated, "The Taylor case can, however, be distingushed successfully from the one at bar on its facts."

Jeanne Bell's testimony at the hearing shows that there was much more than just an elapsed time of ten months, and the testimony of Dr. Sloane taken by deposition shows that there is much more to Jeanne Bell than the mature sophistication she presents in the courtroom.

Jeanne Bell's own testimony shows that she knew what she was doing when she signed Exhibit 1 (T. 16, 17):

> Q. Would you identify for us Exhibit No. 5?
>
> A. Yes, that is a letter I wrote the Londons.
>
> Q. You state in that letter, do you not, Miss Bell, that at the time this transaction took place in California you didn't really know what was going on, is that correct?
>
> A. I wasn't fully aware of everything, like I told you before.
>
> Q. Well, but you did understand, Miss Bell, that you were abandoning the care, custody and the control of this child, did you not? You knew this?
>
> A. I knew that I had a year to make up my mind, after I signed the papers.

> Q. You knew that the intention of the Londons was to pursue this didn't you? You knew that's what they were there for, and you knew that by so doing at that time that you were abandoning the role of the mother over this child, didn't you?
>
> A. Well, yes.
>
> Q. You were conscious of this in the hospital, weren't you?
>
> A. Well.
>
> Q. You knew that the people were down there from Utah and that they intended to take the baby back, isn't that corect? And you knew that by so doing that your role as a mother would be nil with respect to this child while it was in their care, custody and control. Is this true?
>
> A. Yes.

As was said in *In re Adoption of Cannon,* 243 Iowa 828, 53 N.W.2d 877:

> Neither objector here pays any attention to the question of the child's interest. They both stand apparently upon the naked, legal proposition that a parent may encourage and give written consent to an adoption and thereafter, before the adoption is fully consummated, arbitrarily change his mind and, without stating any reason, figuratively speaking, "pull the rug from under" petitioner, court, and child, and prevent consummation. Such interpretation of our statutes is unthinkable.

A leading case in this area with facts almost identical to the case now before the court is *In re Holman's Adoption,*

80 Ariz. 201, 295 P.2d 372. There the natural mother was a minor, age 16, and deserted by her husband at the time the baby was born. She signed a consent to adoption knowing full well that the adoptive parents intended to move to California. The consent she signed apparently had a clause relating to the one-year period before final consent, as in the case before the court, and the defenses raised by the natural mother are exactly the same defenses as have been raised by the respondent here. After extensive review of the cases and authorities, some of which have been quoted in this brief, the court stated :

> * * * We hold that a consent once given by the parent or other persons having the authority to give such consent may not be revoked after the child has been placed in the possession of the adoptive parents, except for legal cause shown, as where such consent was procured through fraud, undue influence, coercion, or other improper methods.

In *Ex parte Schultz,* 181 P.2d 585, the court, after a thorough review of authorities and cases dealing with the subject of revocation of consent, stated at page 586:

> Conversely, many tribunals have denied the right to revoke, and base such denials on (1) principles of contract; (2) estoppel or other equitable grounds; (3) public policy favoring adoption of children, particularly illegitimate children, or (4) the welfare of the child as apparent from the facts.

In *In re Adoption of D*____, 252 P.2d 223, our court had the occasion to pass upon the question of withdrawal of consent as required by our statute. The child was two

years old when placed for adoption by someone other than the natural mother. However, the natural mother appeared in open court and gave her consent, but then ten months later withdrew her consent before the adoption was completed. While the facts are not exactly similar to the case before the court, the court's acceptance of the principles stated in the Schultz case and the comments made thereon are equally applicable to the present case. The court stated, at page ___:

> It would not be surprising that people who desire to adopt children may actually have greater affection for an adopted baby than a natural parent who might have designedly or even by misadventure happened to become a parent to a child who may not have been particularly wanted and may present some unplanned-for difficulties * * * Viewed in that light, there certainly have intervened "vested rights," and respondents have, in reliance upon representations made, placed themselves in a different position, the undoing of which would cause them irreparable injury in the most real sense. Appellant not only stood by and knowingly permitted, but actually encouraged such circumstances to eventuate, and further, formally executed the consent to adoption. Under such facts, she should in equity and good conscience be estopped to assert her rights to custody.
>
> When a parent has failed to give the child the attention and love normally to be expected, has abandoned its care to others, and by irresponsible conduct shown an unwillingness or inability to measure up to parental responsibilities, these matters may be taken into consideration by the court in connection with other factors in determining the right to custody.

> Once a child has been cast adrift and is without responsible parental care, the policy of the law should be to assist in every way in establishing a satisfactory parent-child and family relationship. Adoptive parents should not be discouraged by construction of the law which would cause them to fear the consequences of accepting a child because of the knowledge that the fate of their efforts would be at the will of the natural parent.

The same sentiments were expressed in the case of *In re Adoption of a Minor,* 144 F. 2d, page 650:

> It is apparent that if in particular cases the unstable whims and fancies of natural mothers were permitted, first, to put in motion all the flow of parental love and expenditure of time, energy and money which is involved in adoption, and then, as casually, put the whole process in reverse, the major purpose of the statute would be largely defeated. * * * A premium would, instead, be put upon the emotional instability which produces illegitimates; ot say nothing of the possibilities for racketeering which such an interpretation of the law would put in reach of those who may be criminal in their tendencies as well as lacking in the qualities of parenthood.

Though Jeanne Bell has stoutly denied her intention to take money for this child, her continual harrassment of Dr. Sloane, as stated in his deposition, and the belief of Dr. Morris that Jeanne Bell called him and offered to settle the matter for $500.00 represents the possible fruition of the fears expressed by Judge Miller in the above-quoted case (Morris Dep. 10, 11).

In *In re Maxwell's Adoption,* 176 N.Y.S.2d, 281, a married woman became pregnant by a man who was not her husband, told her obstetrician to place the baby for adoption. She left the hospital and was not heard from until the adoptive parents commenced adoption proceedings wherein the natural mother was asked to participate, at which time she revoked her consent to such proceedings and requested the return of her child. At page 283, the court stated:

> The mother did not, it is true, leave her child on a doorstep, but surely an abandonment may be established by proof of conduct less drastic than that. Just as plainly the settled purpose to be rid of all parental obigations and forego all parental rights spells out abandonment under Section III.

POINT II

THE NATURAL MOTHER IS NOT A FIT AND PROPER PERSON FOR THE CARE, CUSTODY AND CONTROL OF SAID MINOR CHILD.

From the testimony given at the hearing, the Juvenile Court concluded that Jeanne Bell was mature enough to care for this minor child, and with this conclusion we find ourselves in partial agreement. But the maturity exhibited by Jeanne Bell is a sophistication born of experience, rare in a girl of her age. When interrogated by the court relative to the cost of rearing a minor child her attitude was that of sheer guess, and her answer so indicated; when asked questions concerning the population of her

immediate community, she couldn't even given an estimate (T. 28, 29). Nowhere in the transcript is there evidence of the type of maturity the court states, and one can only conclude that it was an observable maturity except for the testimony of Dr. Clarence Doxey Swanner, who testified that Jeanne Bell "is quite mature" and that "she is as mature as a fifteen-year-old could be." Dr. Swanner's testimony was otherwise absolutely neutral, as shown in pages 101 to 104 of the Transcript. The record is otherwise devoid of any other indication that Jeanne Bell's maturity level is any greater than the average fifteen-year-old. She is intelligent and she is sophisticated, but these qualities do not weigh heavily in her favor as an adequate mother and a fit and proper person for the custody and control of a minor child.

On the contrary, the record shows that Jeanne Bell is emotionally immature. At page 7 of the Transcript she affirms her faith in her ability to care for this child. Her faith is based on a new religious affiliation cultivated since the minor child was placed with the Londons (T. 31). She also received legal counsel in the State of California and retained counsel to represent her in Utah. Her own attorney in California told her she didn't know what she was doing, and that she was being foolish (T. 26). Her composure at the hearing was unique in a girl of fifteen years. Yet, when Jeanne Bell was unhappy with her mother and an argument developed over the money being spent in the proceedings in Utah, she immediately penned a letter to her attorney advising him not to continue the matter and

that she was discontinuing her attempt to regain the custody of her natural-born child.

At the hearing Jeanne Bell represented to the court that when Exhibit I was presented to her, she did not know some of her rights, and that she should have been advised on some points respecting the adoption of this child (T. 7, 8). Her allegation is that she should have been allowed to discuss the matter with members of her family but the fact of the matter is that all of the members of her family were in her hospital room at the time the document was signed, and she had more than ample opportunity to discuss it with her family prior to the birth of the baby, but admitted that the subject was not discussed in her household (T. 11).

A page 4 of the Transcript, Jeanne Bell states in no uncertain terms that all along she was secretly planning on keeping her child and fighting to get it back at some future date, and then at page 14 the following is recorded.

> Q. When did you first discover, Miss Bell that you did not attend to have this baby remain with the Londons?
>
> A. Three weeks or a month later.
>
> Q. Did you discuss this with your mother?
>
> A. Well. I wanted to, but I was kind of reluctant to.
>
> Q. At any time did she consent to your obtaining this child back during these discussions?

A. Not at first, but later when she knew I really wanted the baby back she did.

And again, on page 15:

Q. Yes. Is this true between the time you signed Exhibit 1 and the time that Exxhibits 2 and 3 were sent to me, you made no inquiry concerning this child. Is that correct? To me or to the Londons?

A. Oh no, I called my doctor.

Q. But made no inquiries to me or to the Londons?

A. As I say, I did not know my rights, and I couldn't contact them.

Q. Isn't it true that a copy of Exhibit 1 was left with you? You had a copy all the time, and on that copy it said "Bean and Bean" on the bottom, "Layton, Utah," does it not?

A. Yes.

Q. So this was in your possession all the time, is this correct?

A. Yes, that is correct.

The first indication that things were not going well in California came by way of Exhibits 2 and 3 addressed to counsel for petitioners-appellants. Jeanne Bell had counsel's address right on her copy of Exhibit 1, but for a ten-month period she made no attempt to contact petitioners-appellants or their counsel to make known her dissatisfaction.

Jeanne Bell and her mother, Barbara Bell, were actually fraudulent in their representations to the Londons at the time the baby was placed for adoption. Exhibit 1, set forth in full in the Statement of Facts, was the agreement signed by Jeanne Bell and her mother, Barbara Bell, and states the father of the child in unknown, but in fact Jeanne Bell did know the name of the natural father, and so did her mother (T. 17). In fact, it was Jeanne Bell's represenatiton at the hearing that the baby was born as the result of a rape committeed upon her by the natural father, Johnny Wright. She told her mother this and her mother told the doctor. Apparently Barbara Bell was not advised of this when it occurred, because she was so shocked when she discovered that her daughter was pregnant (T. 22, 40). No criminal action was ever brought against Mr. Wright, and Jeanne Bell and Mr. Wright had conversations after the child was placed with petitioners-appellants (T. 21, 22; see also Sloan Dep. 8, 12, 13, and Drennen Dep.)

POINT III

IT IS IN THE BEST INTEREST AND WELFARE OF SAID MINOR CHILD THAT SHE REMAIN WITH PETITIONERS, AND THAT THEY BE ALLOWED TO PROCEED WITH ADOPTION.

This child is a happy, well adjusted, normal two-year-old girl, with a place in a family that belongs to her. After two years of love and affection and the giving of herself in response to the attention, surroundings, and atmosphere

of the London home, this infant child has some rights to be considered. At the time of her birth she was totally rejected by her natural mother, and Barbara Bell refused the responsibility for her care. With an abundance of love, the petitioners at that very instant were willing to provide something that the natural mother and Barbara Bell were not prepared to provide, to wit: An acceptance of the baby for what she was, and not for what she represented the natural mother to be. The situation has not materially changed from the date the child was born. Jeanne Bell is an unmarried female, age 16. She has two more years of high school and no immediate prospects of marriage and the establishment of a home of her own. The transcript is replete with evidence that Mrs. Bell can no longer control her adopted daughter, and that in fact she conforms her views to those expressed by Jeanne Bell (T. 55, 56). That there is contention in the home concerning finances and the possible position this child would have in the home is amply demonstrated by the testimony of Jeanne Bell concerning the letter she wrote to her attorney, which was never mailed (T. 110, 111).

In the findings of fact supporting the decision of the Juvenile Court, paragraph 7 states that "Barbara Bell has promised to support both the mother and said child and aid in caring for said child until the mother has obtained her education and is emancipated" (R. 13). After nine months of pregnancy, Barbara Bell had a wonderful opportunity to take this infant child to her heart and to her home and expend her resources in caring for this child, but she re-

fused to do so. In the words of Jeanne Bell at page 10 of the transcript:

> Yes, she told me to sign it, that I was too young to take care of it and the responsibility, that she couldn't take on the responsibility either.

The Londons were willing to take that responsibility with no questions asked, and they committeed all of their resources to the welfare and happiness of that infant child when those who had the primary responsibility refused to do so.

CONCLUSION

A consideration of the background and home life presently enjoyed by his minor child, as contrasted with that which the natural mother could provide is undoubtedly a major consideration, and in view of the fact situation presented, the child certainly is entitled to the stability and love evident in the appellant's home.

The element of contract and representation, and change of position based on the representations. are present in this case beyond any doubt, and abandonment is clear.

We therefore respectfully submit that the decree of the Juvenile Court should be reversed, and the minor child should be left in the custody of petitioners-appellants preparatory to adoption, and the natural mother should be

permanently deprived of the custody and control of Maralee London, a minor.

Respectfully submitted,

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